

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 202003914	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 10:00 PM	Location of Incident: East 14th Street and 5th Avenue	Precinct: 13	18 Mo. SOL 12/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 06/04/2020 5:09 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 06/04/2020 5:09 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT An officer			
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Salvator Anselmo	00000	905392	007 PCT
2. POM Kevin Shaw	00795	963751	013 PCT
3. POM Vincent Cuomo	03784	956560	007 PCT
4. POF Erica Rivera	25743	951148	007 PCT
5. POM James Arenella	12781	960172	007 PCT
6. POM Vince Wu	27185	946401	007 DET
7. POM Cesar Mejia	03952	963648	007 PCT
8. POF Katlyn Kang	16212	960742	028 PCT
9. POM Matthew Biondo	02915	950083	TB VTF
10. DI Steven Hellman	00000	906437	PBMS
11. POM Matthew Ansbro	13974	954490	TB VTF
12. POF Kristin Goldberg	21948	959662	TB VTF
13. POF Melissa Lento	04081	942055	TB VTF
14. LT Thomas Nostramo	00000	933102	TB VTF

Officer(s)	Allegation	Investigator Recommendation
A.LT An officer	Force: An officer struck individuals with a baton.	
B.LT An officer	Force: An officer struck § 87(2)(b) with a baton.	
C.LT An officer	Abuse: An officer interfered with § 87(2)(b)'s use of a recording device.	
D.LT An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
E. Officers	Force: Officers used physical force against § 87(2)(b)	

### Case Summary

Gregory § 87(2)(b) filed the following complaint with the CCRB online on June 04, 2020.

At approximately 9:50 p.m. on June 02, 2020, § 87(2)(b) was at the intersection of 14<sup>th</sup> Street and 5<sup>th</sup> Avenue in Manhattan as a part of the protests in the wake of George Floyd's death. § 87(2)(b) was among a crowd of protesters when he observed an officer in a white shirt allegedly hitting individuals with his baton (**Allegation A: Force: Nightstick as Club**, § 87(2)(g)). One of these officers then approached § 87(2)(b), grabbed him by the arm, and then struck him in the leg with a baton (**Allegation B: Force: Nightstick as club**: § 87(2)(g)). This action also interfered with § 87(2)(b)'s filming (**Allegation C: Abuse of Authority: Interference with recording device**, § 87(2)(g)). An officer that § 87(2)(b) did not see then allegedly said, "get on the fucking ground," (**Allegation D: Discourtesy: Word**: § 87(2)(g)). § 87(2)(b) went to the ground of his own accord, but while he was getting to the ground, an officer he did not see allegedly hit him in the arm with a baton (also **Allegation B: Force: Physical Force: Nightstick as club**, § 87(2)(g)). Several officers then placed § 87(2)(b) on the ground and placed him into handcuffs (**Allegation E: Force: Physical force, pushed/ shoved/ threw**, § 87(2)(g)).

The investigation obtained cell phone footage of the incident taken by § 87(2)(b) (**Board Review 01**, summarized in **Board Review 02**), cell phone footage of the incident taken by § 87(2)(b)'s neighbor (**Board Review 03**, summarized in **Board Review 04**), and video from a New School surveillance camera that captured the incident (**Board Review 05**, summarized in **Board Review 06**). § 87(2)(b) also provided the investigation with pictures of the bruising he sustained as a result of this incident (**Board Reviews 07-09**). The investigation also obtained BWC covering the incident location, but none of the FADOs alleged in this incident (**Board Reviews 12-31 and 62-79**). The investigation also obtained seven videos from handheld TARU operators. There was no relevant TARU pole or LMSI footage (**Board Reviews 32-38**). These did not capture the specific allegations pertaining to this case.

### Findings and recommendations

#### Pleading Language for all allegations to be closed as officer unidentified

**Allegation A: Force: An officer struck individuals with a baton.**

**Allegation B: Force: An officer struck § 87(2)(b) with a baton.**

**Allegation C: An officer interfered with § 87(2)(b)'s use of a recording device.**

**Allegation D: Discourtesy: An officer spoke discourteously to § 87(2)(b)**

### Known facts and general descriptions

§ 87(2)(b) provided a brief narrative in his online complaint (**Board Review 10**) and provided a statement to the CCRB over the phone on June 11, 2020 (**Board Review 11**).

In his online complaint, § 87(2)(b) stated that he observed the same officer that struck him, "beating people with a club," prior to approaching him. However, in his phone statement, § 87(2)(b) stated that he saw police chasing a group of people close to him and swinging their batons at people, but he was unable to describe the officers or civilians involved (this allegation was determined to be a duplicate of 202004136). § 87(2)(b) described the officer that initially struck him with the baton as a white male with a medium build wearing a helmet. He was unable to see the officer that said, "get on the fucking ground," or the officer that allegedly hit him with a baton in the arm.

§ 87(2)(b) provided a video taken by a neighbor of his who happened to be at the incident location at the same time as § 87(2)(b) (they did not attend the protest together and § 87(2)(b) did not wish to provide this individual's name or contact information) (**Board Review 03**). Approximately 16 seconds into the video, an officer in a white shirt can be seen swinging his baton in the direction of a group of protesters, though it is unclear if he makes contact with anyone and from this angle it is unclear which protesters he is swinging the baton at. This video does not show any other officers swinging their batons at that group of protesters at this point in the video. Approximately 22 seconds into the video, the same officer approaches § 87(2)(b) who appears to be filming on his cell phone, and grabs § 87(2)(b)'s arm. The officer then strikes § 87(2)(b) in the leg with his baton. This officer appears to be a white male with a medium build and he is wearing a white shirt. He is wearing a numberless helmet with a visor that somewhat obstructs his face in the video, and no insignia or command collar pins can be seen. Aside from his white shirt, there are no clues as to his identity. At approximately 45 seconds of the same video, three officers take § 87(2)(b) to the ground, though it is unclear if any of them strike him with their batons. One of these officers is a black male in a blue uniform with a numberless helmet. He is wearing a surgical mask that obstructs his face. Another is a white male with sergeant's chevrons on his uniform. He is also wearing a helmet with a visor that somewhat obstructs his face. The camera does not capture a shield number on his helmet. The third is a white male in a blue uniform with helmet number 14934. This shield number belongs to Police Officer Matthew Bessen of the 75<sup>th</sup> Precinct. He was interviewed by the investigation and was not present for this incident. This video does not capture the discourtesy alleged by § 87(2)(b) and it is unclear if the three officers that are involved in handcuffing § 87(2)(b) ever strike him with their batons. The video also does not capture any clues as to the officers' commands. Toward the end of the video, following § 87(2)(b) being taken into custody, at approximately 2:00, officers move toward the crowd and begin arresting individuals. During these arrests, a group of officers in the background appear to raise and lower their batons, but it's not clear from the video whether they strike anyone or who they strike (these allegations were determined to be duplicates of case 202004771). The identity of these officers cannot be determined from the video. The video depicts officers pulling protesters out of the crowd and to the ground and one protester being dragged into the street by an unknown white shirted officer wearing a cap. These allegations were determined to be duplicates of case 202004771.

The cell phone video footage taken by § 87(2)(b) covers part of the same portion of the incident (**Board Review 01**). At approximately 1:35 in the video, the officer in the white shirt can be seen with his baton cocked back as if he is going to swing it, but it is unclear from this angle if he actually does swing the baton. No other officers can be seen swinging their batons. At 1:40 in the video, this officer can be seen approaching § 87(2)(b) and reaching for him but the video does not capture a better picture of this officer's face or any additional clues as to his identity.

The surveillance video footage from the New School (**Board Review 05**), captures this incident as well. At approximately 8:20, § 87(2)(b) can be seen in the top right frame of the video taking a cell phone recording. To his right, officers are engaged with a group of protesters and at 8:24 an officer in a white shirt in the top right frame can be seen swinging his baton similar to a baseball bat. At 8:35, the same officer swings his baton again. In both instances it is unclear if he contacts anyone. At 08:40, this officer approaches § 87(2)(b) and grabs him by the arm and strikes him in the leg with his baton. Other officers assist him and then three officers hold § 87(2)(b) on the ground while handcuffing him. Because of the angle of the camera and the resolution it did not provide any additional clues as to the officers' identities. It does not have any audio, so no discourtesies can be heard. Following § 87(2)(b)'s arrest, beginning at 10:00, the video depicts additional helmeted officers moving toward the crowd, and grabbing and arresting members of the crowd. Because of the angle and playback speed, it was insufficient to identify possible subject officers. During the

arrests, various officers pull protesters out of the crowd and onto the ground and one protester who appears to go limp is dragged into the street by an unidentified white shirted officer wearing a cap. These allegations were determined to be duplicates of case 202004771.

### **BWC and TARU**

After receiving negative results from two requests for BWC, the investigation obtained 20 BWC videos from officers present in the vicinity of 14<sup>th</sup> Street and 5<sup>th</sup> Avenue (**Board Reviews 12-31 and 62-79**). None of these videos captured § 87(2)(b) getting hit with a baton or any other people being struck with a baton. Police Officer Vince Wu's BWC (**Board Review 29**) captured the corner on which § 87(2)(b) was arrested at around the time he was arrested, but it did not help in identifying any subject officers. Police Officer Lopez's third BWC appears to capture an arrest at the corner in the vicinity of where § 87(2)(b) was arrested, but it is only 12 seconds long and the majority of it only captures the back of an individual being handcuffed. It did not assist in identifying possible subjects (**Board Review 21**).

Multiple officers interviewed stated that they did not activate their BWC after being instructed not to because TARU cameramen were in charge of filming protests. Other misconduct and risk management letters will be recommended as part of case 202004771.

The investigation also obtained six videos from handheld TARU operators. There was no relevant TARU pole or LMSI footage (**Board Reviews 32-38**). One of the handheld videos (**Board Review 37**) briefly captures officers moving in the background in the area of the crowd, but does not capture FADO allegations associated with this case and does not assist with subject officer identification. None of the videos capture the specific allegations pertaining to this case.

### **NYPD Documents Reviewed**

§ 87(2)(b)'s arrest was primarily documented on the Criminal Court Summons (C-Summons § 87(2)(b) issued to him by Police Officer Cesar Mejia for violating the executive curfew order, Administrative Code section 3-108 (**Board Review 39**). The summons notes the time and place of occurrence as 10:00 PM at 14<sup>th</sup> Street and Fifth Avenue, and contains the following narrative: "At t/p/o undersigned was observed at 2200 hrs in violation of the mayor's executive order setting a mandatory curfew of 8:00 p.m. citywide."

The investigation requested all TRIs prepared for incidents that occurred at the incident location. The results showed that a TRI was prepared for an incident at 14<sup>th</sup> Street and 5<sup>th</sup> Avenue, but it was unrelated to § 87(2)(b)'s arrest and was prepared for § 87(2)(b) the complainant/victim in CCRB case 202004771 (**Board Review 40**). The investigation reviewed the Mass Arrest processing report from MAPCs for June 2, 2020, which listed over 22 civilians arrested for curfew violations in the vicinity of East 14<sup>th</sup> Street and 5<sup>th</sup> Avenue at the approximate time of this incident. None of these individuals received other charges and the document did not assist with identifying potential subjects to the allegations associated with this case (**Board Review 61**).

The investigation obtained and reviewed the PBMS detailed roster (**Board Review 41**), the 6<sup>th</sup> and 13<sup>th</sup> Precinct roll calls (**Board Reviews 42 and 43**), and Event D20060226701 (the event related to the arrests occurring at the incident location) (**Board Review 44**). These documents did not narrow down possible subject officers given the fact that multiple officers that were not a part of the detail responded to the location and there were too many officers, from multiple commands, present in the vicinity to be able to use documents to determine possible subjects.

### Concurrent Investigations

§ 87(2)(b) filed this complaint with IAB and it received Log #2020-14744. It was initially assigned to Sgt. Yoon Lee of Patrol borough Manhattan South Investigations, but it is currently being investigated by Sgt. Miguel Abreu of IAB Group 1. On April 19, 2021, the undersigned called and spoke with Sgt. Abreu, who informed the undersigned that his investigation into § 87(2)(b)'s allegations had yet to identify any subject officers. Additionally, CCRB cases 202004002, 202004136, and 202004771 cover incidents that occurred in the vicinity of 14<sup>th</sup> Street and 5<sup>th</sup> Avenue in Manhattan at around the same time as this incident. There were no documents received in these cases that helped identify potential subjects in this case as the investigations were still active per the date of this report.

### Ranking Officers

The investigation identified Deputy Inspector Steven Hellman, the commanding officer of the 13<sup>th</sup> Precinct at the time of this incident, as the highest-ranking officer identified on scene. The investigation interviewed him on February 05, 2021. The investigation was unable to identify any officers with a higher rank than Deputy Inspector Hellman. When he was interviewed (**Board Review 55**), Deputy Inspector Hellman stated he was unsure if he was the highest-ranking officer on scene and described previously being assigned as the incident commander at earlier protests. Deputy Inspector Hellman said that he was given general instructions by unknown higher-ranking officers prior to this incident to arrest anyone violating the curfew. Some of the officers interviewed described receiving instructions from “bosses” or higher-ranking officers, but no chiefs or officers of a higher rank than Deputy Inspector Hellman were identified as being present in the videos reviewed or documents obtained.

### Officers interviewed

The investigation interviewed 15 officers identified as being in the vicinity of the incident location.

In his statement, § 87(2)(b) identified Lieutenant Salvator Anselmo, of the 7<sup>th</sup> Precinct, as a witness officer. The investigation interviewed Lieutenant Anselmo on September 09, 2020. He had no recollection of witnessing this incident and was unable to identify any of the possible subject officers when shown video of the incident (**Board Review 45**). He did not recall officers using their batons against protesters.

From video footage, the investigation identified an officer involved in § 87(2)(b)'s arrest with helmet (shield) number 14934. According to CTS, this shield number belongs to Police Officer Matthew Bessen of the 75<sup>th</sup> Precinct. He was interviewed on August 27, 2020. He stated he was not present for this incident, which his memo book corroborated. Additionally, he has a large tattoo on his forearm that the officer in the video did not have (**Board Review 46**). He did not recall lending his helmet to another officer.

From video footage, the investigation identified Police Officer Kevin Shaw (Shield 795), of the 13<sup>th</sup> Precinct as a witness to this incident. The investigation interviewed him on November 13, 2020. He acknowledged that he was present during the incident and assisted with arrests, but did not recall observing any officers hit § 87(2)(b) or individuals with their batons or using any profanity. He was unable to identify any of the possible subject officers (**Board Review 47**).

The investigation interviewed Police Officer Cesar Mejia (Shield 03592) of the 7<sup>th</sup> Precinct on November 25, 2020. Although he was § 87(2)(b)'s arresting officer, he did not witness § 87(2)(b).

§ 87(2)(b)'s arrest and he was unable to identify any of the possible subject officers from the video (**Board Review 48**). He did not recall observing officers using their batons against protesters.

The investigation interviewed Police Officer Erica Rivera (Shield 25743) of the 7<sup>th</sup> Precinct on September 30, 2020 (**Board Review 49**); Police Officer James Arenella (Shield 12781) of the 7<sup>th</sup> Precinct on September 30, 2020 (**Board Review 50**); Police Officer Vince Wu (Shield 27185) of the 7<sup>th</sup> Precinct Detective Squad on November 19, 2020 (**Board Review 51**); Police Officer Katlyn Kang (Shield 16212) of the 28<sup>th</sup> Precinct on November 25, 2020 (**Board Review 52**); Police Officer Matthew Biondo (Shield 02915) of the Citywide Vandals Taskforce on January 13, 2021 (**Board Review 53**); Police officer Matthew Ansbro (Shield 13974) of the Citywide Vandals Taskforce on February 04, 2021 (**Board Review 54**); Deputy Inspector Steven Hellman of the 13<sup>th</sup> Precinct on February 05, 2021 (**Board Review 55**); Lieutenant Thomas Nostramo of the Citywide Vandals Taskforce on February 23, 2020 (**Board Review 56**); Police Officer Kristin Goldberg (21948) of the Citywide Vandals Taskforce on February 24, 2021 (**Board Review 57**); Police Officer Melissa Lento (Shield 4081) of the Citywide Vandals Taskforce on March 02, 2021 (**Board Review 58**) and PO Vincent Cuomo of the 7<sup>th</sup> Precinct (**Board Review 80**). None of these officers recalled witnessing § 87(2)(b)'s arrest or any of the allegations made by § 87(2)(b) and none of them were able to identify any of the possible subject officers after viewing relevant video.

§ 87(2)(b), § 87(2)(g)

#### **Allegation E: Force: Officers used physical force against § 87(2)(b)**

§ 87(2)(b) described getting onto the ground on his own and did not allege any force during the handcuffing, beyond the baton strikes previously discussed.

In § 87(2)(b)'s neighbor's footage, (**Board Review 03**), beginning at approximately 00:30, after the unidentified white shirt officer strike's § 87(2)(b)'s leg with a baton, another white shirt grabs § 87(2)(b) away. That white shirted officer then walks away and two officers in helmets and blue uniforms grab § 87(2)(b) who appears to get onto his knees. One of the officers then appears to grab § 87(2)(b)'s hands, but § 87(2)(b) pulls his hands away and keeps them in front of him. The two officers then appear to push § 87(2)(b)'s upper torso to the ground, but he resists laying on the ground and putting his hands behind his back, a third uniformed blue shirted officer assists the other two officers and the three officers pull his hands behind his back and handcuff him. § 87(2)(b) then continues to lay on the ground and his hands are held by one of the officers.

In the New School security footage, (**Board Review 05**), beginning at approximately 8:40, the unidentified white shirted officers grabs § 87(2)(b) and pulls him away from the crowd on the left side of the frame (top right corner). A bald white male in a black t-shirt and black shorts attempts to pull § 87(2)(b) away, but then backs toward the crowd. Another white shirt grabs § 87(2)(b) and brings him closer to the streetlight where a blue shirted officer in a helmet begins handcuffing him. § 87(2)(b) appears to get on his knees on his own, but then appears to pull his hands in front of him. Two and then three uniformed blue shirted officers appear to push § 87(2)(b)'s torso toward the ground, but he holds his torso up, briefly grabs the base of the streetlamp, and pulls slightly

away from the officers. The three officers then hold § 87(2)(b) on the ground and handcuff him. § 87(2)(b) then lays on the ground in handcuffs. Multiple members of the crowd move closer to § 87(2)(b) with their hands up. At approximately 10:00 officers push members of the crowd back who get closer to the street. At 10:10, multiple officers move quickly toward the crowd. Officers begin pulling people from the crowd and members of the crowd pull these individuals back and push officers away. Around the same time, § 87(2)(b) is stood up and escorted into the street and out of the frame.

When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject. The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death (**Board Review 81**).

In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

#### Civilian CCRB History

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 59**).

### Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- According to the Office of Court Administration (OCA), between July 10, 2012 and June 03, 2013, § 87(2)(b) was convicted of three counts of disorderly conduct (**Board Review 60**).
- A Notice of Claim request has been submitted to the NYC Comptroller's Office and the results will be added to the case file upon receipt.

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Squad No.: 10

Investigator:	<u>Matthew Corwin</u>	<u>Inv. Matthew Corwin</u>	<u>5/03/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>5/03/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date